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DOCKET FILE COPY ORIGINAL

October 5, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th St. S.W.
Washington D.C. 20554

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OCT - 5 2004

Federal Communications Commission
Office of Secretary

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Re: Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of
Local Exchange Carriers, WC Dkt. No. 04-313, CC Dkt. No. 01-338.
Submission of Comments and Compliance with Protective Order

Dear Ms. Dortch:

On behalf of the Association of Local Telecommunications Services and the below listed companies, ("ALTS") we have enclosed for filing, pursuant to the protective order in the above referenced proceedings, two copies of a redacted version of the Declaration of Robert J. Shanahan, Conversent Communications, LLC. Confidential versions of the enclosed declaration have also been sent to Gary Remondino of the Wireline Competition Bureau and were filed separately with the Secretary.

Due to circumstances beyond ALTS' control, we were unable to obtain Mr. Shanahan's signature in time for the October 4, 2004 comment deadline. The comments, absent Mr. Shanahan's declaration, were filed on October 4, 2004. Today, we have refiled these comments with a redacted version of Mr. Shanahan's declaration enclosed as appendix H.

Please let us know if you have any questions.

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/s/

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**DECLARATION OF ROBERT J. SHANAHAN ON BEHALF OF
CONVERSENT COMMUNICATIONS, LLC**

Robert J. Shanahan, being duly sworn, deposes and states as follows:

I. INTRODUCTION

1. My name is Robert J. Shanahan. I am the President and Chief Executive Officer of Conversent Communications, LLC ("Conversent" or the "Company"), formerly known as New England Voice and Data, LLC.
2. I have over 20 years of experience in management, sales, operations, finance and regulatory matters pertaining to telecommunications, including local exchange, long distance, wireless by-pass, and competitive access.
3. I co-founded Conversent in 1998. Prior to that time, I served as Regional Vice President of Brooks Fiber Communications ("WorldCom") for four years, successfully developing a nine city, six-state region. I was also an original member of the Brooks Fiber Communications Senior Management Team.
4. Conversent provides local and long distance voice and broadband services to small business customers in small cities and suburbs in the Verizon North service territory, Connecticut and New Jersey. The average Conversent customer has approximately seven lines, and many Conversent customers have only a single business line.
5. Conversent has found that it can efficiently provide voice and internet access services to small businesses in small cities and suburban areas by relying on its own switches and collocated transmission equipment and by leasing collocation space, unbundled loops (including 2-wire analog loops, xDSL loops, DS-1 loops, DS-3 loops and dark fiber loops from the ILECs), and unbundled interoffice dark fiber transport from the ILECs or, wherever available, from third party vendors.
6. Although Conversent has only been providing service since the fall of 1999, it currently has over 37,000 customers and about 272,000 access lines. Conversent is headquartered in Marlborough, Massachusetts and has over 600 employees.

**II. CONVERSENT HAS SPENT MILLIONS OF DOLLARS IN ORDER TO OBTAIN
ACCESS TO UNBUNDLED LOOPS FROM VERIZON AND SNET**

7. Collocation is generally a prerequisite for purchasing both stand-alone unbundled loops and unbundled IOF dark fiber. Conversent has collocated in over 134 ILEC central offices in order to be able to purchase stand-alone DS-0, DS-1, xDSL and dark fiber loops.

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8. As with its voice services, Conversent provides internet access services to small and medium-sized businesses by leasing unbundled loops from the ILEC.
9. Conversent has already paid Verizon and the Southern New England Telephone Company ("SNET") approximately 20 million dollars in charges for collocation arrangements.
10. In addition to paying Verizon and SNET over 20 million dollars in collocation charges, Conversent, of course, has incurred substantial costs in purchasing and installing the transmission equipment that it deploys in its collocation arrangements. To date, Conversent has spent over 61 million dollars in capital costs for purchasing its own switching and transmission equipment.
11. Conversent has also invested a considerable sum in the interoffice transport that it leases from ILECs and third party vendors. To date, Conversent has spent over 20 million dollars for transport facilities that are necessary to interconnect with the ILECs and to connect Conversent's collocation arrangements, which in turn are necessary to purchase stand-alone unbundled loops.
12. Conversent has also spent several millions of dollars to develop and operate office support systems ("OSS") in connection with unbundled network elements ("UNEs"). This includes the capital and operating costs for pre-ordering, ordering, maintenance, repair, and billing associated with UNEs. This does not count the several millions of dollars that Conversent has invested in OSS in order to bill its own customers.

**III. CONVERSENT PROVIDES DS-1 LEVEL SERVICES TO SMALL BUSINESSES
BY LEASING UNE LOOPS FROM THE ILEC**

13. Conversent typically serves end users by bundling traditional local and long distance voice services with internet access services. Verizon ("VZ") has adopted a similar strategy in the states where it has obtained Section 271 authority.
 14. Conversent provides DS-1 level voice, DS-1 level internet access and integrated DS-1 services to small and medium-sized businesses. Integrated DS-1 services can be used for voice-grade and data transmissions over the same DS-1 loop.
 15. If the FCC were to rule that ILECs are no longer required to unbundle DS-1 loops, Conversent would no longer be able to provide these services to small- and medium-sized
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businesses in small cities and suburbs. It would simply not be economical for Conversent to build loops of its own to serve these customers.

16. Moreover, if ILECs were not required to sell loops at TELRIC-based regulated prices, it is extremely unlikely that Conversent would be able to purchase access to ILEC loops at prices that would permit Conversent to provide competitive DS-1 level services. To illustrate this fact, consider that the rates for UNE DS-1 loops in Massachusetts, for example, where Conversent is headquartered, are \$55.44 (Metro); \$73.61 (Urban); \$83.65 (Suburban); and \$130.71 (Rural). The monthly rate for special access DS-1 loops is \$197 for Zone 1, \$218.16 in Zone 2 and \$231.49 in Zone 3. Verizon's 84-month Customer Discount Plan ("CDP") rate, under its special access tariff, is \$118.20 in Zone 1, \$130.90 in Zone 2 and \$138.89 in Zone 3. Even if Conversent purchased special access under the long-term special access arrangements, Conversent's loop costs would more than double, making it virtually impossible to compete in the retail market for DS-1 services in Massachusetts.

A. Small Businesses Customers Want Conversent's DS-1 Services

17. Integrated DS-1 service is the fastest growing service that Conversent offers. It is demanded primarily by customers with eight to 22 basic business lines who also need broadband internet access. One of the reasons integrated DS-1 service is so popular among these customers is that the customers can pay for as few as eight voice channels and four data channels at the outset and add channels as the customer's business grows.
18. When Conversent began providing integrated DS-1 services, in 2000, Verizon did not offer an analogous product. But the Conversent service has been so popular that Verizon was forced to begin offering its own competitive integrated DS-1 service called "High Capacity FlexGrow." High Capacity FlexGrow was introduced in several states in 2002 and was later modified and reintroduced as "Enhanced Flexgrow" in 2003. The price per line of Enhanced Flexgrow is about eight to ten percent higher than Conversent's integrated DS-1 service.
19. High-speed cable modem service is not an alternative to DS-1 level internet access. In Conversent's experience, cable modem service is offered primarily, if not exclusively, to residential customers. In the limited number of small cities and suburbs where the applicable cable company has begun to offer cable modem service to business customers, the geographic scope of that offering is frequently limited and is significantly smaller than the broadband service area offered by Conversent or other non-cable broadband carriers. Moreover, the cable companies offer no product that combines voice and data services over the same facility, such as with Conversent's integrated DS-1 services.
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20. Even in those few geographic areas where cable companies have updated their outside plant and are actively marketing cable modem service to small businesses, Conversent's experience is that most business customers with broadband requirements find cable modem service to be inadequate. Unlike Conversent's DS-1 level services, which are provided over dedicated facilities, cable modem service is delivered over facilities that are shared among multiple customers. In addition, the bandwidth reserved for cable modem service is fixed. As a result, multiple customers share a fixed amount of bandwidth, often resulting in oversubscription (too many users with not enough bandwidth). As the number of cable modem subscribers in a given geographic area increases, individual subscribers tend to experience a reduction in the amount of bandwidth that is available for high-speed internet access. Conversent's experience is that business customers that require bandwidth for business grade applications prefer dedicated broadband access and are willing to pay more for it.
21. It is because of these limitations that Conversent's customers do not appear to view cable modem service as a substitute for Conversent's DS-1 internet access and integrated DS-1 services. In short, the vast majority of small and medium-sized business customers in Conversent's service territory have only wireline options for business grade DS-1 service.

IV. IN MOST OF CONVERSENT'S SEVEN STATE SERVICE TERRITORY, INTERMODAL COMPETITION FOR SMALL- AND MEDIUM-SIZED BUSINESSES IS VIRTUALLY NON-EXISTENT

22. As I will explain in the state-by-state analysis below, Conversent faces competition for voice and internet access services from both ILECs and from other facilities-based CLECs that rely on the ILECs for unbundled loops to provide such broadband services.
23. The small- to medium-sized business market is a market segment that traditionally has been neglected by Verizon and SNET. This may explain the fact that Conversent currently serves customers that were previously served by companies such as Northpoint, Votts, Rythms, and others. Rather than return to the ILEC, the customers want broadband service that only CLECs provide.
24. Except in certain limited geographic areas, Conversent has not faced substantial competition from cable companies. The cable companies do not market voice services to small businesses and do not have an internet access service that competes with Conversent's DS-1 level services.

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A. MASSACHUSETTS

25. Conversent provides voice and internet access services to small and medium-sized businesses located primarily in small cities and suburbs in Massachusetts, including ***
Begin Confidential [

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26. As of June 30, 2004, Converseant served 15,006 small businesses in Massachusetts, totaling more than 116,000 lines. Approximately, 50 percent of these lines are served over DS-1 UNE Loops.
27. In addition to Verizon, Converseant competes with other CLECs, most notably ChoiceOne, Broadview and XO, to provide voice and internet access services to small- and medium-sized businesses in Massachusetts. Like Converseant, ChoiceOne, Broadview, and XO offer DS-1 type services. Like Converseant, these CLECs rely on unbundled loops from Verizon to provide these DS-1 level services.
28. Converseant encounters *no competition* from cable companies or their affiliates in small cities and suburban areas in Massachusetts.
29. Converseant encounters *no competition* from fixed wireless broadband providers in small cities and suburban areas in Massachusetts.
30. Although it is not its major geographic focus, Converseant does serve some parts of Boston. Comcast sells broadband services in Boston, but Converseant is not aware of any instance in which it has competed with Comcast for service to a small- or medium-sized business customer in Boston. This is because Comcast's cable modem service is marketed primarily, if not exclusively, to residential customers.
31. Comcast's cable modem service is simply not in the same product market as Converseant's DS-1 level services.
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B. RHODE ISLAND

32. Conversent serves small businesses in small cities and suburbs, including *** **Begin Confidential**

***** End Confidential**

33. As of June 30, 2004, Conversent served 4,406 small businesses in Rhode Island, totaling about 29,000 access lines. Approximately 37 percent of these lines are provisioned over DS-1 UNE loops that Conversent leases from Verizon.
34. ChoiceOne and Verizon are Conversent's main competitors in Rhode Island for the provision of voice and internet access services to small and medium-sized business customers. Like Conversent, ChoiceOne provides DS-1 type services over unbundled loops leased from VZ.
35. In the past, Conversent rarely, if ever, faced competition in Rhode Island from cable companies for voice or internet access services to small and medium sized businesses in limited areas. Recently, Cox began providing cable modem service to some small businesses in certain limited areas. However, for the same reasons discussed in paragraphs 19-21 above, our customers do not view Cox's cable modem service as a substitute for Conversent's DS-1 level services.

C. NEW HAMPSHIRE

36. Conversent provides voice and internet access services to small and medium-sized businesses in small cities and suburbs in *** **Begin Confidential**

***** End Confidential**

37. As of June 30, 2004, Conversent served 3,654 small businesses, totaling more than 23,000 lines. Approximately 42 percent of these lines are provisioned over DS-1 UNE loops leased from Verizon.
38. Conversent's main competition in New Hampshire for small business customers come from Verizon, ChoiceOne, and BayRing Communications. These CLECs also rely on DS-1 UNE loops to provide DS-1 services to small- and medium-sized businesses.

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39. Conversent faces *no competition* for small business customers from Comcast in small cities and suburban areas in New Hampshire. Comcasts cable modem service is marketed primarily, if not exclusively, to residential customers.
40. Conversent faces *no competition* from fixed wireless broadband providers in New Hampshire.

D. MAINE

41. Conversent provides voice and internet access to small- and medium-sized businesses in small cities and suburbs in Maine, including *** **Begin Confidential**

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42. As of June 30, 2004, Conversent served about 1,871 small businesses, totaling more than 9,000 lines. Approximately 27 percent of these lines are provisioned over DS-1 UNE loops leased from Verizon.
43. In addition to Verizon, Conversent faces competition in Maine from other CLECs that provide voice and internet access services to small business customers, most notably, MidMaine Communications, Pinetree Networks and ChoiceOne. These CLECs provision DS-1 service over DS-1 UNE loops from Verizon. Conversent faces *no competition* from fixed wireless broadband providers in Maine.
44. Conversent faces some very narrowly targeted competition for broadband customers from Time Warner Cable, primarily in the City of Portland. Time Warner Cable offers a cable modem service called "Roadrunner."
45. Although Roadrunner is primarily a residential service, (Roadrunner is typically bundled with cable TV and telephone service), Time Warner Cable is selling it to very small business customers in Portland. In Conversent's experience, most of the small business customers that are buying this service appear to be customers with two to four business lines that do not have a need for business applications such as sending videos or large files to other companies or customers.

E. CONNECTICUT

46. Conversent provides voice and internet access services to small and medium-sized businesses that are located primarily in small cities and suburbs in Connecticut including, *** **Begin Confidential**
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47. As of June 30, 2004, Conversent had approximately 7,400 small business customers in Connecticut, totaling more than 47,000 access lines. Approximately 44 percent of these lines are provisioned over DS-1 UNE loops from SNET.
48. In addition to SNET, Conversent faces competition for small business customers from other CLECs in Connecticut, most notably, Choice One. ChoiceOne markets DS-1 level services to small businesses. Conversent faces *no competition* from fixed wireless broadband providers in Connecticut.
49. In Stamford and Norwalk, Cablevision Lightpath, an affiliate of Cablevision, offers two types of broadband services: "Lightpath.NET" and "Business Optimum Online." Lightpath.NET is a DS-1 service that competes with Conversent's integrated DS-1 service. However, Conversent believes that this service is provided over newly constructed fiber or over facilities leased from SNET; it is not provided over the cable network. Conversent also believes that Cablevision Lightpath is no longer building new fiber to connect and "light" buildings in Stamford and Norwalk and is not aggressively marketing its services to new customers in either of these locations. Business Optimum Online is delivered over the cable network. The customers that are buying Business Optimum Online appear to be tenants of buildings that are already connected to the cable company's network.
50. Cox Communications also provides internet access services in Connecticut. As in Rhode Island, Cox has been primarily focused on servicing residential customers. However, it is now marketing its cable modem service to small business customers, particularly in Hartford and surrounding areas.
51. For the reasons described in paragraphs 19 – 21 above, Conversent's experience is that its customers do not view Business Optimum Online or Cox's cable modem service as a substitute for Conversent's DS-1 internet access or integrated DS-1 services. Conversent believes that the small business customers that are subscribing to Business Optimum Online or Cox's cable modem service are already connected to the cable network and who do not have a need for the business grade applications that are available from Conversent's DS-1 level services.

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F. NEW YORK

52. Conversent provides voice and internet access services to small- and medium-sized businesses in Long Island,¹ Westchester County,² and Manhattan.³
53. As of June 30, 2004, Conversent had 3,081 small business customers in New York totaling over 26,000 access lines. Approximately 43 percent of these lines are provisioned over DS-1 UNE loops from Verizon.
54. In addition to Verizon, Conversent faces competition for small business customers from other CLECs, most notably, Broadview Communications and XO. Broadview and ChoiceOne sell DS-1 services to small businesses.
55. Conversent faces *no competition* in the provision of broadband service in New York from fixed wireless providers.
56. Conversent faces limited competition from cable companies or their affiliates in pockets of Long Island and Westchester County. Cablevision Lightpath, an affiliate of Cablevision offers two types of broadband services: "LIGHTPATH.NET" and Business Optimum Online. LIGHTPATH.NET is a DS-1 service that competes with Conversent's integrated DS-1 service. However, Conversent believes that this service is provided over newly constructed fiber or over facilities leased from Verizon. Conversent also believes that Cablevision Lightpath is no longer building new fiber to connect and "light" buildings in Long Island or Westchester County. Conversent believes that Business Optimum Online is delivered over the cable network. The customers that subscribe to Business Optimum Online are already connected to the cable company's network. For the reasons described earlier, Conversent's experience is that its customers do not view Business Optimum Online as a substitute for Conversent's DS-1 services.

G. NEW JERSEY

57. Conversent provides voice and internet access services to small- and medium-sized businesses in small cities and suburbs in New Jersey, including *** **Begin Confidential**

¹ In Long Island, Conversent's service area includes *** **Begin Confidential**

*** **End Confidential**

² In Westchester County, Conversent's service area includes *** **Begin Confidential**

*** **End Confidential**

³ In Manhattan, Conversent's service area includes the following wire centers: *** **Begin Confidential**
*** **End Confidential**

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. * End Confidential**

58. As of June 30, 2004, Conversent had 2,403 small business customers, totaling 20,000 access lines. Approximately 44% of these lines are provisioned over DS-1 UNE loops from Verizon.
59. In addition to VZ, Conversent faces some competition for small business customers from other CLECs in New Jersey, most notably, XO and Broadview. Both of these CLECs offer DS-1 services to small businesses. These CLECs rely on unbundled loops from VZ to provide DS-1 level services.
60. Conversent rarely, if ever, faces competition from cable companies or their affiliates in small cities and suburban areas in New Jersey. Conversent does not face competition from fixed wireless broadband providers in New Jersey.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 9/30/04, 2004.


Robert J. Shanahan